UNSOLVED PROBLEMS OF THE LAW, AS EMBRACED IN MENTAL ALIENATION.[1]

No. 2.

The greatest difficulties, and the largest number of unsolved problems, arise in the administration of criminal jurisprudence. The professions of medicine and of law have been tasked from the earliest periods to harmonize in the results at which they should arrive, and to establish such general principles as should be reasonable in themselves; and, while they should offer a shield to the really insane, should, at the same time, protect the community against the acts of criminals done under the guise of madness. The plea of insanity, it should be remembered, is one easily interposed; it is one that, if established by sufficient proofs, offers impunity to crime; one that admits the act charged as criminal to have been committed, and often boldly puts it forward as evidence of the very insanity which is claimed to exonerate from its commission; and one which sometimes a small amount of proof will render so plausible as seemingly to establish. Under

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[1] Since the article in the preceding number was printed, the writer has been favored by Hon. HENRY E. DAVIES, one of the judges of the Court of Appeals, with a copy of his opinion, and the decision of the Court of Appeals in the *Parish Will Case*, in which many points of great interest are discussed and decided relative to the capacity to make a will. The case of *Stewart's Executor* vs. *Lispenard*, 26 Wend. 255, holding that a single advance above idiocy gives such capacity, is overruled, and the more wise and salutary doctrine established, that the testator must have sufficient capacity to comprehend perfectly the condition of his property, his relations to the persons who were, or should, or might have been the objects of his bounty, and the scope and bearing of the provisions of his will. That he must have sufficient *active memory* to collect in his mind, *without prompting*, the particulars or elements of the business to be transacted, and *to hold them in his mind* a sufficient length of time to perceive at least their obvious relations to each other, and be able to form *some rational judgment* in relation to them. Thus the result arrived at in this case, which has been so long vexing the courts, will be received with great satisfaction by the profession, who have generally regarded with disfavor the principle settled in the case of *Stewart* vs. *Lispenard*. The *Parish Will Case* will appear in the next volume of the *New York Reports*.

all these inducements to present it, it is not surprising that its appearance in court has been of late years quite frequent; so much so that it has been at times so unfashionable to plead it, that it has been received almost with derision. There are, however, reasons why it should have a fair hearing. The occurrence of insanity, in all its varieties and degrees, becomes more and more frequent as the means, processes, facts and results of civilization become increased and multiplied. Man in his primitive state is rarely ever insane. The Caucasian is about the only variety that can lay claim to this malady, and, even in that variety, it is very little prevalent in despotic governments. It is in those that are free, in which mind can come freely into conflict with mind, in which every chord of this curiously toned instrument is kept constantly strung, that every possible variety of mental derangement is of the most frequent occurrence. And thus, as new exigencies arise for mental action, new phases of mental alienation may appear, and hence, new series of phenomena may spring up, which cannot be brought within any rule, principle, or test already established. This must give rise to many unsolved problems in this department of the law.

It must be all along borne in mind that the act charged as criminal can only in the eye of the law become such, when it is done with a criminal intent. A failure to establish that, deprives it of that moral element which alone can constitute crime. Without that the act could only inflict an injury, but never a wrong. The blow of a maniac, although it might create an injury, yet could no more inflict a wrong than the kick of a horse or the fall of a stone. Very different is a blow dealt with all the fulness of intention. Then the act is punished as criminal, not only to render justice to the person injured and wronged, but also to exert a salutary effect in the prevention of the occurrence a second time of the same offence. This latter would be entirely lost in its effect upon the maniac. If really deranged he could no more be reformed by punishment than any one of the animal creation.

The question always presenting itself is, what is the kind ar extent of mental alienation which can be legally interposed as

defence to an indictment for a criminal offence? The answer to this question will bring to view the *different tests* which courts of law have proposed for the purpose of determining the validity of every plea setting up insanity as a defence. These tests, and the constructions which courts have placed upon them, become, therefore, important matters of inquiry.

The *first and oldest test*, and that in relation to which there is no controversy, is, "*when the defendant is incapable of distinguishing right from wrong in reference to the particular act.*" This may cover and exonerate two classes of mentally alienated: viz. the one whose alienation consists in preternatural defect, as being idiotic, imbecile, or demented; the other, all those afflicted with general mania. The application of this test has become widened as human experience has become more extended. In the *Trial of Arnold*, in 1723, 8 Hargrave's State Trials 322, Mr. Justice TRACY insisted that to be exonerated under this test, *a man must be totally deprived of his understanding and memory*, a limitation which, fortunately, the courts have not thought proper since to adhere to. A total privation is never now insisted upon. It is deemed sufficient if a privation exist in reference to the particular act. In the answer of the fifteen judges to the House of Lords, in 1843, in the case of *McNaughton*, 8 Scott N. R. 595, they say, "it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know he was doing what was wrong." The law as administered in England, to be consistent with itself, must refuse to partial insanity the effect of exoneration from crime. If that cannot legally affect man's civil relations, it cannot be expected to affect those which are criminal.

The *second test* is more recent, and may be stated to be "*when the defendant is acting under an insane delusion as to circumstances, which, if true, would relieve the act from responsibility, or where his reasoning powers are so depraved as to make the commission of the particular act the natural consequence of the delusion.*"

This test was first introduced, and the legitimate effect of delusion in criminal jurisprudence first put forward and admitted in *The King* vs. *Hadfield*, 27 Howell's State Trials 1281. The speech of Lord Erskine upon that trial is a splendid specimen of juridical reasoning. The grounds taken by him and acquiesced in by the court were,

1. That it is the reason of man which makes him accountable for his actions, and that the deprivation of reason acquits him of crime.

2. That it is unnecessary that reason should be entirely subverted or driven from her seat, but that it is sufficient if distraction sit down upon it along with her, holds her trembling hand upon it, and frightens her from her propriety.

3. That the law will not measure the sizes of men's capacities, so as they be *compos mentis*.

4. That there is a difference between civil and criminal responsibility. That a man affected by insanity is responsible for his criminal acts where he is not for his civil.

5. That a total deprivation of memory and understanding is not required to constitute insanity.

6. That the individual is irresponsible where the insanity consists in hallucination; where the disease springs directly from the delusive sources of thought, and all their deductions, within the scope of the malady, are founded upon the immovable assumption of matters as realities, either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation.

7. That the act complained of and sought to be avoided, must be the immediate unqualified offspring of the disease. Dean's Medical Jurisprudence 535–6.

The law in relation to the test of delusion has been more recently stated, with great caution, in one of the answers of the fifteen judges in the case of *McNaughton*, before referred to, to wit: "That their answer must depend on the nature of the delusion; but making the assumption that he labors under such partial delusion only, as is not in other respects insane, we think he must be considered in the same

situation as to responsibility, as if the facts with respect to which the delusion exists were real. For example; if, under the influence of his delusion, he supposes another man to be in the act of taking away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was, that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

This statement is certainly characterized by extreme caution; but the question arises, whether it really covers the whole ground. Is it true that no other delusion except that embraced in the statement would afford a protection from an act otherwise criminal? The delusion under which Hadfield deliberately discharged his pistol at King George III., at Drury-Lane Theatre, intending to kill him, would not, upon the principle here stated, have been available. He was persuaded by a religious enthusiast and induced to believe "that a great change of things in this world was about to take place; that the Messiah was to come out of his, the enthusiast's, mouth, and that, *if the king was removed*, all the obstacles to the completion of their wishes would be removed also." The *removal of the king* came from that time to be a fixed idea in the mind of Hadfield, and under this delusion he committed the act for which he was tried and acquitted.

It is clear, however, that the doctrine as settled in the case of Hadfield, has not been uniformly adhered to in England, and that, in a case of delusion, recurrence has again been had to the test of ability to distinguish right from wrong. Thus, in the trial of Bellingham for the shooting of Hon. Spencer Percival, which occurred in 1812, twelve years after the trial of Hadfield, (see 1 Collinson on Lunacy 650,) it appeared that he labored under many insane delusions, the principal of which were that his own private grievances were national wrongs; that his losses should be made good by government; that the government refused, and he determined, by shooting its prime minister, to bring his affairs before the country, where he supposed he should obtain justice. The point of delusion seems not here to have been presented, as Lord MANS-

FIELD charged the jury that the single question for them to determine was, whether, when he committed the offence charged upon him, he had sufficient understanding to distinguish good from evil, right from wrong, and that murder was a crime not only against the law of God, but against the law of his country. He was convicted and executed.

In the case of *The King* vs. *Orford*, (5 Carrington & Payne 168,) the defendant was shown to labor under the delusion that the inhabitants of Hadleigh, and particularly the deceased, were continually issuing warrants against him, with intent to deprive him of liberty and life. Lord LYNDHURST charged the jury that they must be satisfied, before they could acquit the prisoner on the ground of insanity, that he did not know, when he committed the act, what the effect of it, if fatal, would be, with reference to the crime of murder. That the question was, did he know that he was committing an offence against the laws of God and nature? On a careful examination of the whole case it is pretty apparent that the point Lord LYNDHURST decided was, that a man who, under an insane delusion, shoots another, is irresponsible when the act is the product of the delusion. In confirmation of this was the verdict of the jury, which was one of acquittal on the ground of insanity.

There is little doubt but that in this country a delusion or hallucination completely established, and sufficiently connected with the act done, would divest it of the character of crime. The question first arising is, how is the fact of the entertainment of delusion or hallucination to be arrived at? There seems but one way of doing this, and that is by giving in evidence the acts and declarations of the defendant himself in reference to this point. Those acts and declarations are accordingly admissible for the purpose of showing the state of mind of the party, and that whether they were done or made before or after the doing of the act complained of. *Lake* vs. *The People*, 1 Parker's Crim. Rep. 495. The effect of the hallucination thus ascertained must be pronounced by the law. If any facts are in dispute it is for the jury alone to find them. The establishing the fact of delusion, and the tracing the act complained of to it as its direct, natural, or necessary consequence,

makes out a perfect defence. Under this principle Hadfield was properly acquitted, and Bellingham should have been acquitted also. The case of *The People* vs. *Lawrence*, 48 Niles' Register 119, does not seem to come so completely within the principle, although the doctrine as settled in *The King* vs. *Hadfield*, resulted in the acquittal of the prisoner. Lawrence labored under the delusion that he was entitled to the English crown, and applied to General Jackson, then President of the United States, for the grant of a sufficient sum of money to enable him to assert his right to it. The general refused the grant, upon or after which Lawrence endeavored to shoot him by discharging at him a pistol. The doubt here would be whether the act was sufficiently connected with the delusion.

In the case of *Freeman* vs. *The People*, 4 Denio 10, the prisoner was tried on a charge of murder, and was shown, on the trial, to possess a very limited capacity, and to have been laboring under some delusions or hallucinations as to his right to obtain compensation for services rendered in the state's prison at Auburn, N. Y.; and failing to obtain anything by endeavoring to commence suits, he supposed he must commence killing for that purpose, and actually killed four in the family of Van Nest, and badly wounded another. In this case the question presented to the court was no other than the finding whether the capacity to distinguish between right and wrong was a finding of sanity. And the court say that this, (the capacity to distinguish between right and wrong,) as a test of insanity, is by no means invariably correct, for while a person has a very just perception of the moral qualities of most actions, he may, at the same time, as to some one in particular, be absolutely insane, and consequently, as to this, be incapable of judging accurately between right and wrong. That if the delusion extends to the alleged crime, on the contemplated trial, the party manifestly is not in a fit condition to make his defence, however sound his mind may be in other respects.

The *third test* is *where the defendant is impelled by a morbid and uncontrollable impulse to commit the particular act.* The state of mind which originates such an act has been variously denominated.

The more general term is *moral insanity*. It has also been called *impulsive insanity;* and a term more recently proposed is that of *volitional insanity*. Here lie more especially the unsolved problems of the law. This state of mind, or species of insanity, is by no means universally admitted. Even the medical profession are not agreed in its admission, although those the most conversant with the insane are the more generally in its favor. To show what it is, I will give, as a sample, the statement of one afflicted with it:—"I was lying on the sofa, and my wife and children were sitting by the fire; I had been talking to them very comfortably, when suddenly my eye caught the poker,—a desire came upon me which I could not control; it was a desire to shed blood. I combated with it as long as I could. I shut my eyes and tried to think of something else, but it was of no use; the more I tried the worse I became, until at last I could bear it no longer, and, with a voice of thunder, I ordered them all out of the room. Oh! had they resisted—had they opposed me, I should have murdered them every one. I must have done it; no tongue can tell how I thirsted to do it." At the time this statement was made the physician found him in a state of great agitation, countenance flushed, eyes unusually bright and shining, pulse rapid, breathing hurried and disturbed, as though he was just recovering from some violent mental commotion. It would appear from this statement that there was

1. No preternatural defect, or want of mental power.
2. No delusion or hallucination was present.
3. No absence of the moral sense, or power of distinguishing between right and wrong.
4. No perversion of his natural affections, as his love for his wife and children seems unabated.
5. None of the indications of a demented or insane mind seem here to be present; and yet the physical indications proclaim to the physician that some unseen but mighty influence is at work somewhere in the system, and most probably in the brain. And yet, with this disagreement among the doctors, and the conservatism and attachment to precedents with the courts, it is slow

indeed in obtaining a foothold there. Questions of this kind have much the most frequently arisen in the lower courts, and hence are only to be found in newspapers, pamphlets, and periodicals. This malady is recognised and ably described by Chief Justice GIBSON, of Pennsylvania, in his charge to the jury, as given in Wharton & Stillé's Medical Jurisprudence, § 54. "There is," says he, "a *moral or homicidal* insanity, consisting of an irresistible inclination to kill or to commit some other particular offence. *There may be an unseen ligament pressing on the mind, drawing it to consequences which it sees but cannot avoid, and placing it under a coercion which, while its results are clearly perceived, is incapable of resistance.* The doctrine which acknowledges this mania is dangerous in its relations, and can be recognised only in the clearest cases. It ought to be shown to have been habitual, or at least to have evinced itself in more than a single instance. It is seldom directed against a particular individual; but that it may be so, is proved by the case of the young woman who was deluded by an irresistible impulse to destroy her child, *though aware of the heinous nature of the act.* The frequency of this constitutional malady is fortunately small, and it is better to confine it within the strictest limits. If juries were to allow it as a general motive, operating in cases of this character, its recognition would destroy social order as well as personal safety. To establish it as a justification in any particular case, it is necessary either to show, by clear proofs, its contemporaneous existence evinced by present circumstances, or the existence of an habitual tendency developed in previous cases, becoming in itself a second nature."

So, also, Judge LEWIS, recently chief justice of Pennsylvania, says, "Moral insanity arises from the existence of some of the natural propensities in such violence, that it is impossible not to yield to them. It ought never to be admitted as a defence, until it is shown that these propensities exist in such violence, *as to subjugate the intellect, control the will, and render it impossible for the party to do otherwise than yield.* Where its existence is fully established, this species of insanity relieves from accountability to human laws." That this species of insanity exists and is distinctly

recognised by the medical profession and by courts of law is obvious from the following references:—See *Article by Dr. Woodward*, 1 Amer. Journ. of Insan. 322; *People* vs. *Kleim*, 2 Id. 245; *Review of Case of Abner Baker*, 3 Id. 26; *Case of Reibello*, Id. 41; *Essay by Dr Aubanel*, Id. 107; *The People* vs. *Griffin*, Id. 227; *The People* vs. *Sprague*, 6 Id. 254; *Same Case*, in 2 Parker's Crim Rep. 43; *Commonwealth* vs. *Furbush*, 9 Amer. Journ. of Insan. 151; *Warren's Remarks on Oxford and McNaughten's Case*, 7 Id. 318; *Commonwealth* vs. *Rogers*, Pamphlet issued by Bemes & Bigelow, also in 1 Amer. Journ. of Insan. 258, and 7 Metcalf 500; *Commonwealth* vs. *Mosler*, 4 Barr 266; *State* vs. *Spencer*, 1 Zabriskie 196; *Trial of Willard Clark*, 12 Amer. Journ. of Insan. 212; *Daniell on Impulsive Insanity*, Amer. Journ. of Insan., July number for 1846, p. 10; *Paper read before the Judicial Society, by Forbes Winslow*, M. D., D. C. L., *on the Legal Doctrine of Responsibility in Cases of Insanity connected with alleged Criminal Acts*, 15 Amer. Journ. of Insan. 156; *The Case of John Freeth*, 15 Id. 297; *Dr. Ray's Examination of the Objections to the Doctrine of Moral Insanity*, 18 Id. 112; and *Dr. J. Parigot on Moral Insanity in relation to Criminal Acts*, noticed in 18 Id. 305.

The difficulty with courts has not been so much the recognition of this species of insanity as the settlement of the tests to be applied and the forms under which it is admissible. There is a natural and proper reluctance to departing from the old tests which immemorial custom and usage have so long approved and sanctioned. And yet these, without so far stretching as to endanger that distinctive character which constitutes their value, are inadequate to the embracing of this species of insanity. The plain reason is that it is a species which was utterly unknown when these tests were adopted. We accordingly witness in very many of these cases an anxious reaching out by the court, either so to expand or enlarge an old test, or to propose some new one, under which this phase of insanity may be included. Thus, Chief Justice HORNBLOWER, in the *State* vs. *Spencer*, 1 Zabris. 196, says, "In my judgment, the true question to be put to the jury is, whether the prisoner was *insane* at the time of committing the act; and in

answer to that question there is little danger of a jury's giving a negative answer, and convicting a prisoner who is proved to be insane on the subject-matter relating to or connected with the criminal act, or proved to be *so far* and *so generally deranged* as to render it difficult, or almost impossible, *to discriminate between his sane and insane acts.*"

In *The People* vs. *Kleim*, above referred to, Judge EDMONDS says, "If some controlling disease was in truth the acting power within him, which he could not resist, or if he had not a sufficient use of his reason to control the passions which prompted the act complained of, he is not responsible; but we must be sure not to be misled by a mere impulse of passion, an idle frantic humor, or unaccountable mode of action, but inquire whether it is an absolute dispossession of the free and natural agency of the human mind." He also reminded the jury that they were to bear in mind that the moral as well as the intellectual faculties may be so disordered by the disease as to deprive the mind of its controlling and directing power.

In the case of *John Freeth*, a Pennsylvania case, before referred to, Mr. Justice LUDLOW, in his charge to the jury, says, "Besides the kinds of insanity to which I have already referred, and which, strictly speaking, affect the mind only, *we have moral or homicidal insanity*, which seems to be *an irresistible inclination to kill, or to commit some other particular offence.* We are obliged by the force of authority to say to you, that there is such a disease, known to the law as homicidal insanity." And again, "if the prisoner was actuated by an *irresistible inclination to kill*, and was utterly unable to *control his will, or subjugate his intellect*, and *was not actuated by anger, jealousy, revenge, and kindred evil passions*, he is entitled to an acquittal, provided the jury believe that the state of mind now referred to has been proven to have existed without doubt, and to their satisfaction."

In the *Trial of Willard Clark*, before referred to, in Connecticut. Hon. WM. W. ELLSWORTH charged the jury that, "If, at the time of the alleged offence, the prisoner had capacity and reason enough to enable him to distinguish between right and wrong in this

instance, or to understand the nature, character, and consequences of the act, and could apply his knowledge to this case, *not being overcome by an irresistible impulse arising from disease*, then he was an accountable being, but otherwise he was not."

In the *Commonwealth* vs. *Rogers*, before referred to, a Massachusetts case, Chief Justice SHAW, a high authority in the law, thus charged the jury: "If it is proved to the satisfaction of the jury, that the mind of the accused was in a diseased and unsound state, the question will be, *whether the disease existed to so high a degree, that, for the time being, it overwhelmed the reason, conscience, and judgment*, and whether the prisoner, in committing the homicide, *acted from an irresistible and uncontrollable impulse;* if so, then the act was *not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it.*"

It is submitted that the charge of the late chief justice, in this case, embraces all the elements that are necessary for the protection both of the accused, if really laboring under this species of insanity, and of the community if he is not. It will be noticed that the first point to establish is the *disease* and *unsound state* of the mind. Here appropriately comes in the paper of *Dr. J. Parigot*, before referred to, in which he insists upon the fact that mental disease cannot be predicated *where there are no physical signs;* and that, for law purposes, insanity may be defined "*the loss of power of control either over one or more of our mental faculties, including especially the absence of free will, demonstrated by moral and physiological symptoms.*" That, in a medical point of view, it is an idiopathic or sympathetic disease of the brain, which interferes with the psychological and physiological functions of this organ. In the illustration we have given of this species of insanity, there were physiological indications plainly significant of disease; and it is apprehended generally that a power thus terribly seizing upon the mental faculties, depriving them of the exercise of all voluntary power, and arresting instantaneously their normal action, compelling them to move in new directions, and under new impulses, leaving at the same time the mind free from all delusion,

and with the perfect ability to comprehend and be shocked by the enormity of the act, must necessarily reveal itself in the organization by symptoms that are unmistakeable in their character. If the jury are required to find the sufficiency of these, and also the irresistibility of the impulse under which the act is done, it will rarely occur that crime will go unpunished, or the community be rendered unsafe. A. D.

Superior Judicial Court of Maine. Penobscot Co. 1862.

JULIA A. FOSTER *vs.* RUFUS DWINEL.

1. A tenant in an action of dower is not estopped from showing that the seisin of the husband was not such as to give his wife a right of dower, where he or his grantor has accepted a deed of the premises from the husband and claims under it, although he may be estopped from denying the right of the husband to give the deed.
2. Estoppels are mutual. The wife is not estopped if the husband, in a deed, misstates his title—as one not giving dower.
3. Dower is no part of the estate of the husband, but an independent and inchoate right, which may become an interest in the estate after his death, if his seisin was such as to give it. But the law will not create this estate by the operation of an estoppel where it otherwise would not exist, where the tenant has simply accepted a deed from the husband, which does not allude to the matter of dower, or to the existence of the wife.
4. Where it appears in the deed from the husband, that his title is only that of mortgagee before foreclosure, no estoppel can arise.
5. The wife of a mortgagee cannot claim dower in an estate until the same is foreclosed by the husband.

Action for dower. Marriage. Death of the husband and demand admitted. The seisin of the husband in such a manner as to entitle his wife to dower denied. It was agreed that the husband, with two others, during the coverture, received a deed of mortgage of the premises, and entered to foreclose; but before the expiration of the three years allowed for redemption, conveyed the land, by deed of release and quit claim, to Benjamin Lincoln, under whom the tenant, through sundry mesne conveyances, holds and claims the same.